

Message Text

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ORIGIN STR-04

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 FEA-01 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 EB-07 FRB-03 H-02 INR-07

INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05

CIEP-01 SS-15 ITC-01 TRSE-00 PRS-01 SP-02 OMB-01

USIE-00 SSO-00 NSCE-00 INRE-00 STRE-00 /107 R

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STR:SCOFFIELD

COMMERCE:DSCHLECHTY

STATE:ECASEY

LABOR:DWANAMAKER

USDA:RSCHROETER

TREASURY:WBARREDA

----- 014408

O 142303Z JUL 76

FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

INFO USMISSION EC BRUSSELS IMMEDIATE

AMEMBASSY CANBERRA

USDEL MTN GENEVA

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E.O. 11652:N/A

TAGS:ETRD, EAGR, GATT

SUBJECT:GATT PANEL ON MIPS

REF: (A) GE 5468; (B) GE 5232; (C) STATE 164554;

(D) STATE 100824; (E) STATE 142149; (F) STATE142834;

(G) GE 5519; (H) GE5545

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1. U.S. OBJECTIVE CONTINUES TO BE CP AGREEMENT TO ESTABLISH
MENT OF A PANEL OF EXPERTS TO DEAL WITH U.S. GATT COMPLAINTS
ON MIPS TO SURETY/LICENSE SCHEMES OF EC. BASIC POSITION
FOR THE JULY 15 MEETING REMAINS AS INDICATED REF C,E, AND
F, SUBJECT AND ADDITIONAL GUIDANCE PROVIDED BELOW. U.S.
REQUEST FOR PANEL SHOULD BE PRESSED VIGOROUSLY TO ENSURE
CP ACCEPTANCE AT THIS MEETING. IN THIS REGARD ADVANCE
CONSULTATION WITH INTERESTED DELEGATIONS (I.E. EC,
AUSTRALIA, ARGENTINA, SPAIN, AND CANADA) AND GATT SECRE-
TARIAT MAY BE USEFUL. ALAN WOLFF, STR GENERAL COUNSEL,
WILL PROVIDE EXPERTISE AND CAN AS APPROPRIATE SPEAK TO THE
SUBSTANTIVE, PROCEDURAL AND LEGAL ISSUES.

2. WE APPRECIATE INFO REF A THAT EC HAS AGREED TO ACCEPT
MIP PANEL IN PRINCIPLE. AS INDICATED REF C PARA 1B WE
CONTINUE TO STRONGLY HOLD THAT THE SPECIFICS OF THE U.S.
COMPLAINT ARE NOT NEGOTIABLE. DEL SHOULD THEREFORE FORCE-
FULLY RESIST ANY ATTEMPT BY EC OR OTHERS TO MODIFY THE
TERMS OF THE COMPLAINT. (FYI AUSTRALIAN EMBASSY HERE

INFORMS US THAT CANBERRA FULLY SHARES AND WILL FIRMLY
SUPPORT THIS VIEW. END FYI). THE U.S. COMPLAINT HAS
ALREADY BEEN PLACED BEFORE CPS. TERMS OF REFERENCE
SHOULD SIMPLY REQUEST PANEL TO ADDRESS THAT COMPLAINT.
WE WOULD THEREFORE EXPECT AND ACCEPT TERMS OF REFERENCE
OF PANEL ALONG FOLLOWING LINES: "TO EXAMINE THE MATTER
REFERRED BY THE GOVERNMENT OF THE UNITED STATES TO THE
CONTRACTING PARTIES PURSUANT TO PARAGRAPH 2 OF ARTICLE
XXIII RELATING TO THE MINIMUM IMPORT PRICE AND IMPORT
LICENSING/SURETY DEPOSIT SCHEMES MAINTAINED BY THE
EUROPEAN COMMUNITY ON CERTAIN PROCESSED FRUITS AND
VEGETABLES, AND TO MAKE SUCH FINDINGS AS WILL ASSIST THE
CONTRACTING PARTIES IN MAKING THE RECOMMENDATIONS OR
RULINGS PROVIDED FOR IN PARAGRAPH 2 OF ARTICLE XXIII"
(SEE L/1921 FOR FRENCH WHEAT PRECEDENT).

3. THE FINAL PARA OF "TERMS OF REFERENCE" SUGGESTED BY
EC (PARA 2 REF 6) IS COMPLETELY UNACCEPTABLE TO U.S.
COMMERCIAL AND ECONOMIC SITUATION IS NOT "PERTINENT"
ELEMENT TO BE CONSIDERED IN DETERMINING GATT CONSISTENCY.
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WE SHARE VIEW EXPRESSED REF H THAT THIS REPRESENTS EC
EFFORT TO INJECT DAMAGE ISSUE AS WELL AS DELAY WORK OF
PANEL. U.S. REP SHOULD THEREFORE NOT AGREE TO INCLUSION
THIS PARA.

4. IN DISCUSSIONS WITH EC REP YOU SHOULD POINT OUT TOR
PROPOSED BY EC ARE ESSENTIALLY SAME AS ELEMENTS OF U.S.
COMPLAINTS, PRESENTED JUNE COUNCIL MEETING WITH EXCEPTION

OF LAST PARA. WE THEREFORE SEE LITTLE DIFFERENCE BETWEEN U.S. AND EC PROPOSED TOR IF LAST PARA OF EC PROPOSAL IS DELETED AND AS CHANGED, WE WOULD CONSIDER IT ADEQUATE TOR FOR PANEL. WE ASSUME EC CAN RAISE ANY ELEMENTS IT BELIEVES ARE PERTINENT TO THEIR THIRD POINT ON NULLIFICATION AND IMPAIRMENT ONCE PANEL ESTABLISHED. YOU SHOULD MAKE CLEAR HOWEVER THAT U.S. IS NOT ASKING FOR PANEL ASSESSMENT OF DAMAGE AND PANEL WILL LIMIT ITSELF ONLY TO QUESTION OF NULLIFICATION AND IMPAIRMENT. IN THESE DISCUSSIONS YOU SHOULD REITERATE IF APPROPRIATE THAT FAILURE TO AGREE ON ESTABLISHMENT OF PANEL WILL LEAVE U.S. NO CHOICE BUT TO ACT ON OUR BELIEF REGARDING THE ILLEGALITY OF THE EC MIP, LICENSE AND SURETY DEPOSIT SCHEMES.

5. U.S. GOAL IS TO OBTAIN CLEAR DECISION ON QUESTION OF GATT CONSISTENCY. U.S. CANNOT ACCEPT VIEW THAT ECONOMIC AND COMMERCIAL CONSIDERATIONS ARE PERTINENT ELEMENTS IN SUCH A DECISION. U.S. COULD ACCEPT SEPARATION OF ISSUES SO THAT PANEL, AFTER DETERMINING GATT CONSISTENCY

RE 3 U.S. QUESTIONS, COULD THEN DISCUSS ECONOMIC AND COMMERCIAL CONSIDERATIONS AND AS THEY WOULD RELATE TO CP CONSIDERATIONS AS TO WHETHER CIRCUMSTANCES ARE SERIOUS ENOUGH AS TO REQUIRE AUTHORIZATION TO SUSPEND THE APPLICATION OF CONCESSIONS OR OTHER OBLIGATIONS UNDER THE AGREEMENT.

6. IF PRESSED FOR MORE DETAILS ON U.S. COMPLAINT YOU SHOULD STATE OUR PREFERENCE FOR SAVING THE DETAILED PRESENTATION FOR CONSIDERATION BY PANEL. HOWEVER IF YOU BELIEVE THAT SUCH INFORMATION WOULD ASSIST IN ENSURING FAVORABLE CP ACTION ON PANEL, REQUEST YOU MAY DRAW ON THE LEGAL LIMITED OFFICIAL USE

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ARGUMENTS IN THE POSITION PAPER FOR THE XXIII.1 CONSULTATIONS WITH EC (HAND CARRIED BY WOLFF) PARTICULARLY ANNEX D, TO CITE MAJOR VIOLATIONS OF GATT ARTICLES, NOTING THAT PANEL MAY WELL FIND OTHER VIOLATIONS WHEN IT EXAMINES EC SYSTEM.

7. SHOULD PANEL NOT BE ESTABLISHED AT THIS MEETING YOU SHOULD EXPRESS DEEP REGRET THAT U.S. NOT ABLE TO USE MECHANISM PROVIDED BY GATT ARTICLE XXIII AND SAY U.S. WILL HAVE TO ASSESS THIS INABILITY OF THE COUNCIL TO AGREE TO WHAT THE U.S. CONSIDERS ITS RIGHT TO AN OBJECTIVE INVESTIGATION OF ITS COMPLAINT.

8. ON QUESTION OF U.S. AGREEING TO HOLD OVER THE ITEM FOR THE NEXT COUNCIL AGENDA, U.S. REP SHOULD ONLY AGREE

AFTER ALL REPEAT ALL EFFORTS HAVE BEEN MADE TO OBTAIN
ACCEPTANCE OF U.S. POSITION SET FORTH IN PARAS ABOVE.
IT SHOULD BE MADE CLEAR TO COUNCIL THAT HOLDING OVER
THE ITEM WOULD ONLY BE USEFUL IF THE EC WOULD AGREE TO
CONSIDER AND HAVE DETAILED BILATERAL DISCUSSION WITH THE
U.S. ON THE POINTS OF DISAGREEMENT ON THE TERMS OF REFER-
ENCE IN THE INTERIM PERIOD.

9. WE CONCUR WITH YOUR COMMENTS PARA 4 REF H RE FORMATION
OF PANEL AND AUTHORIZE YOU TO EXERCISE DISCRETION ON SIZE
OF PANEL, SUBJECT TO WASHINGTON APPROVAL OF INDIVIDUAL
MEMBERS. IN THIS REGARD WE WOULD APPRECIATE MISSION AND
SECRETARIAT SUGGESTIONS AS TO POSSIBLE CANDIDATES.

10. FOR BRUSSELS AND CANBERRA: PLEASE INFORM APPROPRIATE
AUSTRALIAN OFFICIALS. KISSINGER

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Message Attributes

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